

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JANICE MUSE,	)	
Plaintiff,	)	
vs.	)	No. 3:04-CV-2089-N
	)	
WELLS FARGO BANK,	)	
Defendant.	)	

FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE

Pursuant to the provisions of 28 U.S.C. § 636(b), and an Order of the Court in implementation thereof, subject cause has previously been referred to the United States Magistrate Judge. The findings, conclusions, and recommendation of the Magistrate Judge are as follows:

I. BACKGROUND

On September 27, 2004, plaintiff filed the instant civil action and moved to proceed *in forma pauperis*. The Court found that the motion to proceed *in forma pauperis* should be denied based upon plaintiff's financial status. (See Order of Jan. 25, 2005, at 1-2.) However, the Court deemed it appropriate to grant plaintiff thirty days to pay the full filing fee of \$150.00 to the Clerk of the Court before recommending that *in forma pauperis* be denied. (*Id.*) The Court also admonished plaintiff that failure to pay the filing fee within the time allotted would result in a recommendation that *in forma pauperis* be denied and that this action be dismissed without prejudice for failure to comply with a court order under Fed. R. Civ. P. 41(b). (*Id.*) To date, plaintiff has not paid the requisite filing fee.

II. INVOLUNTARY DISMISSAL

Rule 41(b) of the Federal Rules of Civil Procedure permits a court to dismiss *sua sponte* an action for failure to prosecute or follow orders of the court. *McCullough v. Lynaugh*, 835 F.2d 1126,

1127 (5th Cir. 1988). This authority flows from a court's inherent power to control its docket, prevent undue delays in the disposition of pending cases, and avoid congested court calendars. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-31 (1962). Plaintiff has failed to comply with the Order of January 25, 2005, that she pay the filing fee within thirty days. Accordingly, the Court should dismiss her complaint without prejudice for failure to follow orders of the Court.

### III. RECOMMENDATION

For the foregoing reasons, it is recommended that the Court deny plaintiff's motion to proceed *in forma pauperis* and dismiss her complaint without prejudice for failure to comply with an order of the Court pursuant to Fed. R. Civ. P. 41(b).

SIGNED this 5th day of May, 2005.

  
IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE

### INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

The United States District Clerk shall serve a copy of these findings, conclusions, and recommendation on all parties by mailing a copy to each of them. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to these findings, conclusions, and recommendation must file and serve written objections within ten days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendation to which objections are being made. The District Court need not consider frivolous, conclusory or general objections. Failure to file written objections to the proposed findings, conclusions, and recommendation within ten days after being served with a copy shall bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted by the District Court, except upon grounds of plain error. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (*en banc*).

  
IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE